IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12371 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRUPAMA V. DIPAK SINCE DECEASED & HIS L/R UNDER
Versus
HIGHER EDUCATION COMMISSIONER

Appearance:
1. Special Civil Application No. 12371 of 2000
MR NALIN K THAKKER for Petitioner No. 1-1/3
MR ND GOHIL, AGP for Respondent No. 1-2,4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 15/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the action of the respondents in not giving benefit of her service of 10 years 3 months and 4 days for the

purpose of fixing pension and other retiral benefits. During the pendency of the petition, the petitioner having expired, the legal heirs of the petitioner are brought on record and are pursuing this petition.

2. Shortly stated, the facts of the case are that the petitioner had rendered service as an Assistant Teacher in secondary schools in different periods from 1956 to 1996. The petitioner's stint as Teacher was continuous and uninterrupted from 2.7.73 to 31.10.96. It is not in dispute that for the said period, the petitioner is held entitled to retiral benefits including the pension which was being paid to the petitioner from time to time. The dispute, however, is with respect to considering the past service of the petitioner which is in broken spells. It is the case of the petitioner that despite the break in service, the actual service of 10 years 3 months and 4 days rendered by the petitioner must count towards calculating her pensionary benefits. The petitioner has placed reliance on the Government Resolution dated 21st December 1971, issued by the State Government as also the resolution dated 2nd August 1985 by which certain modifications were made in the earlier G.R. dated 21st December 1971.

3. In para 7 of the G.R. dated 21st December 1971, it is provided, inter alia, that for counting the length of qualifying service of pension, all previous service, whether temporary, officiating or permanent either in one or more than one non-government secondary school, shall be taken into account subject to certain conditions, namely, that the period of each break does not exceed six months and the total period of six breaks should not exceed two years. Para 7 of the said circular reads as follows:-

> "7. In counting the length of qualifying service for pension under this scheme, all previous service whether temporary, officiating or permanent either in one or more than one non-government secondary school, shall be taken into account. Subject to the general conditions that the period of each break does not exceed six months' and the total period of six breaks hereinafter referred to do not exceed two years, break ins service.
>
> On account of any of the reasons listed below not exceeding six breaks in number, should not be treated as interruption entailing forfeiture of past service:-

(i) Break in service on account of resignation from non-Government secondary school, provided it is followed by their taking up service in another recognised non-Government secondary school and is not intervened by their taking employment in any other capacity. Out of the maximum number of six breaks, not more than three breaks should be condoned on account of such resignation.

(ii) Termination of services due to no fault of member of the staff or on account of the circumstances beyond the control of them. If the services of a member of staff have been terminated on disciplinary grounds, after following the prescribed procedure, such break in service cannot be condoned and the service rendered by them in the school from which their services are so terminated on disciplinary grounds will not count for pension."

The said circular of 21st December 1971 appears to have been modified by a subsequent circular dated 1st March 1971, in which it is stated that para 7 of the circular dated 21st December 1971 shall stand modified to the extent that the maximum period of breaks should be enhanced to 15 months subject to the total period of breaks remaining unchanged as also the total number of breaks remaining the same. Certain other minor modifications were also made by the circular dated 1st March, 1974, which are not material for the purpose of deciding this petition.

4. Para 7 of the circular dated 21st December 1971 once again came to be modified by circular dated 2nd August 1985. In para 3 of the said circular dated 2nd August 1985, it is provided that in computing the length of qualifying service for pension under the scheme, all previous service whether temporary, officiating or permanent in any institution, where such service is treated as qualifying service shall be taken into account and the period of break in such service will not be considered as a qualifying service and the actual service rendered in such institutions will be considered as qualifying service for purposes of pension under the scheme. Para 3 of the said circular dated 2nd August 1985 reads as follows:-

"3. Government has carefully considered the request of the Federation and has decided that

> both the schemes should be put on the same footing. In partial modification, therefore, of para 7 of the Government Resolution dated the 21st December, 1971 referred to above, Government is pleased to direct that in computing the length of qualifying service for pension under this scheme, all previous service whether temporary, officiating or permanent in any institution where such service is treated as a qualifying service shall be taken into account. The period of break in such service will not be considered as qualifying service, i.e. actual service rendered in such institutions will be considered as qualifying service for purposes of pension under this scheme."

Para 7 of the G.R. dated 21st December 1971 was modified accordingly.

5. The question, therefore, that has arisen in the present petition is whether the services rendered by the petitioner prior to 2nd July 1973 is required to be taken into account for calculating the pensionary benefits of the petitioner despite the numerous breaks in such service.

6. In the G.R. dated 2.8.85 itself, it is stated that by the G.R. dated 15th October 1984, the Government has circulated a scheme for pension for teaching staff in the non-Government affiliated colleges and these orders do not provide for condonation of breaks as in the case of non-Government secondary school teaches. It has been represented to the Government by the non-Government Secondary School Teachers Federation that the existing provisions of the Pension scheme as applicable to them cause hardship and is discriminatory from the one available to the staff of the colleges and in the Universities. It is, therefore, demanded that pension scheme for non-Government secondary school employees should also provide similarly as in the case of college and University teachers. It was in this background that the request of the staff was accepted by the Government and the above modifications in para 7 of G.R. dated 21st December 1971 came to be issued. Learned advocate for the petitioner has also made available the G.R. dated 15th October, 1984 by which scheme for teaching staff in non-Government affiliated colleges and Universities is framed. In the said G.R. dated 15th October, 1984, there is a provision for computing the length of qualifying service for pension. It will be inclusive of all previous service whether temporary, officiating or

permanent in one or more Government aided colleges, University Department, Higher Secondary School who are being paid grant-in-aid from the Government and the period of break in service will not be considered as qualifying service meaning thereby, actual service will be considered as qualifying service. In the G.R. dated 15th October 1984, there is no condition as was found in the G.R. of 21st December 1971 for considering the broken spell of service for the purpose of counting towards pension. To bring the conditions of these teachers on par with the teaching staff of the non-Government affiliated colleges and Universities, GR dated 2nd August 1985 has been issued. In the said G.R., it is clearly provided that in partial modification of para 7 of the G.R. dated 21st December 1971, in computing the length of qualifying service for pension, all previous service, temporary, officiating or permanent in any institutions where such service is treated as qualifying service shall be taken into account. By way of further clarification, it is stated that the period of break in service will not be considered as qualifying service and the actual service rendered in such institution shall be considered as qualifying service for the purpose of pension. The conditions laid down in para 7 of the G.R. dated 21st December 1971 have been completely done away with. The only interpretation of the said modification vide G.R. dated 2nd August 1985, therefore, is that the Government wanted that the entire past service of a teacher whether temporary, officiating or permanent should be treated as qualifying service. In other words, the actual service put in by the teacher regardless of the length of the break and the number of breaks, should count for considering his qualifying service for pension and the break in service should be ignored for all purposes.

7. In view of the above discussion, I have no hesitation in coming to the conclusion that the petitioner is justified in contending that as per G.R. dated 2nd August 1985, the earlier service rendered by the petitioner should count towards fixing the pension. The respondents clearly erred in not taking into account the earlier broken spells of service rendered by the petitioner relying solely on the circular of 21st December 1971 and 1st March 1974. The position in this regard had undergone material change by virtue of subsequent G.R. dated 2nd August 1985.

8. The Government, however, in its affidavit in reply has stated that the petitioner had not supplied the original service books for the different periods prior to

1973 and she had only produced certificate issued by the School and the certificate did not bear any endorsement from the concerned District Education Officer. This is entirely a different matter altogether. Having held that the petitioner would be entitled to count her earlier service towards her pension entitlement despite breaks, it goes without saying that the same has to be verified by the Government and only if the claim of the petitioner is found genuine with respect to her contention of having actually rendered service earlier that the petitioner can get the benefit of enhanced pension.

9. It is, therefore, directed that the petitioner shall supply to the respondent No.3 all necessary documents in support of her contention that the petitioner had rendered service as mentioned in the petition prior to 1973 also. Upon the receipt of such documents, the respondent No.3 shall forward the same with their remarks to the respondent No.2 within a period of four weeks from the date of receipt of such documents. It will be open for the respondents Nos.1 & 2 to verify the truthfulness of the documents and the claim of the petitioner. It is further directed that in case the respondents come to the conclusion that the petitioner had actually rendered service for all any of the period as contended by her, petitioner's pension shall be refixed by taking into account the said period of service for calculating her pensionary benefits. The said exercise to be completed within a period of six weeks from the date of receipt of the documents by respondent No.2. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)